



PROPOSED ELECTION + VOTING RULES

45-DAY NOTICE FOR ASSOCIATION PROPERTY OWNERS

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TAHOE DONNER ASSOCIATION
11509 NORTHWOODS BLVD.
TRUCKEE, CA 96161

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TAHOEDONNER.COM/ELECTION-RULES-NOTICE

45-DAY NOTICE: PROPOSED ELECTION + VOTING RULES

Pursuant to Tahoe Donner Covenants and Restrictions Article III, Section 7, modifications to and proposed new rules must go out for 45-day member notification and comment period prior to board of director consideration and approval.

Changes to the Tahoe Donner Association Election and Voting Rules will be considered for action by the Board of Directors. The Board of Directors is expected to take action to adopt the proposed new rules and amendments, as they are presented here or with some modification, at a special March board of directors meeting, to be scheduled for early March 2021. The board welcomes any input you may wish to offer regarding this process.

BACKGROUND

Why are changes needed to what we have now?

Tahoe Donner elections are currently guided by (i) Election and Voting Rules, (ii) Fair Campaign Guidelines, and (iii) the Elections Committee Charter and related timelines and procedures produced by the Elections Committee.

The current Election and Voting Rules need to be updated to comply with the Davis Stirling Act, which mandates that the Association adopt very specific operating rules to guide elections. These requirements were significantly amended with the passage of Senate Bill (SB) 323, a bill which became effective as of January 1, 2020. SB 323 added additional protections intended

to prevent incumbent Boards of Directors from following discretionary election rules that could result in unfair elections. While the required process was followed by Tahoe Donner in the 2020 Election, the stand-alone Election and Voting Rules were not updated.

The current documents that guide elections also do not clearly distinguish between what is a required and enforceable operating rule, and what is a guideline or best practice as it relates to an election. During the 2020 election cycle, which saw a record 49.5% voter turnout, claims were made that under the existing election rules and fair campaign guidelines the Board and/or the Elections Committee had a duty to investigate and take action relating to campaign advocacy that occurred

outside of Association channels, such as on social media platforms or via electronic mail sent by candidates or members. As such action would conflict with the free speech rights of interested members and candidates and erode the required neutrality of the Association in the administration of the election, it became clear that revisions to all three documents were needed to clarify what the Association’s role is, and is not, in the election process.

How were the proposed Election and Voting Rules developed?

The process began during the 2020 Election as a response to the claims that arose during the election. The Elections Committee, the Inspector of Elections, legal counsel, and the Board have been actively working on needed reforms since that time. The Elections Committee also conducted a survey of the membership after the election and the members expressed concerns about election process, and specifically uncertainty and some confusion about the Associations role in policing campaign advocacy outside of Association channels.

In August of 2020, the Board directed staff and the Elections Committee to work with counsel to revise and update all of election related documents. Over the last several months the Elections Committee and staff and interested stakeholders have weighed in, and the result, in part, is the proposed Election and Voting Rules herein. Work continues the Fair Campaign Guidelines and the Elections Committee Charter.

PURPOSE

- Express the intent of the legislation
- Clarify the regulations of association elections
- Remove elements from the existing Election and Voting Rules which are not required and insert them more appropriately into the Fair Campaign Guidelines or other guiding documents

EFFECT

- The effect of these proposed rules on homeowners is:
- New Election and Voting Rules take the place of prior Election Rules
 - Provide updated Election and Voting Rules which are clarified and compliant with state and association elections regulations and restrictions
 - Improved implementation of elections processes at the Association

KEY DATES

- January 19, 2021:**
45-Day Member Notification and Comment Period begins
- February 26, 2021:**
Board of directors meeting; hears additional member comment, discussion item only.
- Early March 2021:**
Special board of directors meeting to consider taking action on proposed changes to the elections and voting rules with or without some modifications.
- Board meeting dates subject to change.*

To ensure the board of directors has time to review all member comments, written comments must be submitted by 12PM on March 5, 2021.

Please submit written comments at tahoedonner.com/election-rules-notice, or US mail: Tahoe Donner Association, Attn: Robin Bennett, 11509 Northwoods Blvd., Truckee, CA. 96161.

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The Tahoe Donner Association is a California Community Association and is governed by the Davis-Stirling Common Interest Development Act, as well as the Corporations Code, and the Association's Governing Documents. California law mandates certain procedures that must be followed in an association election and other Member votes that may be required. These statutory provisions supersede any conflicting provisions of the Governing Documents and must be followed during the election and voting process. The purpose of these Election and Voting Rules ("Election Rules") is therefore to set forth the Rules that must be followed to comply with applicable authorities and ensure a fair election and voting process.

1. MEMBER VOTING GENERALLY

1.1 One Ballot per Lot. On each matter submitted to a vote of the Members, each Member shall be entitled to cast one ballot for each Lot owned by such Member. The term Member is the same as the term Owner. When more than one (1) person owns an interest in a single Lot, any ballot cast by a single Member shall be deemed the authorized ballot for that Lot. If more than one ballot is received for a Lot, the first ballot received shall be counted, and no subsequently received ballot shall be recognized. If a Member owns more than one Lot in the Association, the Member should submit a separate ballot for each such property owned.

1.2 Who Votes.

- Individual Owners (Members)
- Trustee Owners: Only one of the Trustees of a Trust that owns a Lot may vote.
- Corporate Owners: Entities (such as corporations or partnerships) must appoint and identify in writing an authorized individual to cast a vote.
- Proxy-Holders: Proxy voting is not

permitted except for quorum purposes. (See Bylaws, Article IV, Section 4(c)).

- Power of Attorney (POA): After confirmation of the POA authority and ballot, the appointed POA may vote on behalf of the Member. The POA authority stops upon death of the Member.
- Deceased Owner(s): Counsel may be consulted to address circumstances related to Estates, Executors, etc.

1.3 No Cumulative Voting. There shall be no cumulative voting. (See Bylaws, Article IV, Section 4(d)).

1.4 Voter List. The Association shall generate and update a Voter List separate from the general Membership List. The Voter List shall be updated prior to each election and include the following information:

- Member's name.
- Voting power, such as Powers of Attorney or Entity/Owner Representatives (if any).
- Physical address of the voter's separate interest and/or the unit and lot number.
- The mailing address for the ballot if different from the physical address of the separate interest or if only the unit and lot number is used.

1.5 Ballots and Meetings. When a question is put to a vote of the Members, if required by law, direct ballots by mail shall be used. The four subjects that require double envelope (i.e., "secret") 30-day mail-in balloting are: Election/Recall of Directors, Assessment decisions legally requiring a Member vote, Governing Document Amendments and grants of exclusive use of Common Area (see Civil Code Section 5100(a)(1)). The ballots should be accompanied by information about the matter, as well as notice of a meeting at which time ballots will be counted. The voting period may be extended by subsequent notice if necessary to ensure Member

participation. As to voting subjects not covered by law (or these Election Rules), the Board may use these or other reasonable procedures that best fit the circumstances of that particular vote but must require written ballots for matters where required as set out in Article IX, Section 2(a) of the Bylaws.

1.6 Quorums. The Governing Documents, the Davis-Stirling Act or other provisions of law may specify a quorum for Member approvals.

2. COMMON TYPES OF VOTES GOVERNED BY THESE RULES

2.1 Election of Directors. The Association shall hold an election for a seat on the Board of Directors at the end of the corresponding Director's term. The quorum for the Election of Directors pursuant to the Bylaws, Article V, Section 5.2(a)(ii) is initially 25% of the voting power of the Members. If that quorum percentage is not obtained, the meeting to count the ballots may be adjourned to another time and/or place within 30 days from the initial meeting date, at which reconvened meeting the quorum percentage shall be reduced to 15% of the voting power of the Members. Thereafter, the Candidates receiving the largest number of votes will be elected. See also Section 5.1 below regarding uncontested elections and acclamation.

2.1.1 Nominations. At least 30 days before the close of nominations, the Association and/or the Elections Committee shall provide Individual Notice of the upcoming Election and the procedure for nominating Candidates. A Member may self-nominate. Nominations will close as announced by the Board. Shortly after the close of nominations, ballots with all qualified Candidates' names included will be prepared and delivered to Members. There shall be no write-in Candidates.

2.1.2 Candidate Qualifications. A Member may be a Candidate for the Board as long as:

- The Candidate is a natural person and a Member of the Association for at least one year.
- In the case of ownership by a Trust, the Candidate is the single Trustee identified on title, or in the case of multiple Trustees named on title, only one of the named Trustees.
- If title is held by an entity that is not a natural person, Civil Code Section 5105(b)(2) provides that the governing authority of that legal entity shall have the power to appoint a natural person to be a Member for purposes of this article. If title is held by an entity with a single owner, such as a single Member Limited Liability Company, that single owner may be a Candidate for the Board. For other entities that may wish to appoint a representative to serve on the Board, counsel should be consulted.
- The Candidate is not a co-owner of a Lot with a concurrently serving director or with another Candidate.
- The Candidate does not have a criminal conviction that prevents the Association from obtaining a fidelity bond, and cannot be delinquent in assessment payments unless the Member has either paid under protest or agreed to a payment plan.

2.2 Recall of Directors. The Recall of one or more Directors is addressed in the Corporations Code Section 7222, the Bylaws and/or Civil Code §§5100-5130.

2.3 Assessment Decisions. The approval of a majority of a quorum of Members is required for the Board to raise regular Assessments or impose a Special Assessment above certain prescribed amounts, as set forth in Civil

Code Section 5605, which provides that the approval of a majority of a quorum of the voting power of the Association must approve (i) a regular assessment that is more than 20 percent greater than the regular assessment for the Association's preceding fiscal year and/or (ii) impose special assessments which in the aggregate exceed 5% of the budgeted gross expenses of the Association for that fiscal year. For purposes of this section, a quorum is specifically defined as more than fifty percent (50%+) of the Voting Power of the Association.

2.4 Governing Document Amendments. Should the Association desire to amend its Articles of Incorporation, Bylaws and/or the Declaration of Covenants and Restrictions ("Declaration"), the text of the proposed Amendment(s) shall be delivered to the Members with the ballot. Quorum participation and/or the number of votes necessary to pass will be indicated on the ballot and/or in the ballot material.

2.5 Grant of Common Area Exclusive Use. Tahoe Donner subdivision maps and Governing Documents identify areas of ownership and control. If approval of Members is required for the Association to grant exclusive use of an area that would otherwise be Common Area, then the voting process in these rules shall be used.

2.6 Other Issues. At the discretion of the Board, any issue presented to the Members for a vote may be conducted using the secret double-envelope process described in these Rules. If the vote does not involve Election or Recall of Directors, Amendment of Governing Documents, Assessment approval, or grant of exclusive use of Common Area, then the Board may describe alternate voting procedures with the voting material that comply with Article IX, Section 2 of the Bylaws, which include a requirement of a written ballot for the matters specified. For all matters

requiring a vote, the quorum and voting requirements are set out in the Governing Documents and/or in Davis-Stirling Act, and those requirements will be included in the voting materials sent to Members.

3. CAMPAIGNING

3.1 Association Media. In the context of an election or other vote, if Association media or Common Area access is provided to Candidates or Members advocating a point of view, all are to be treated equally with respect to such opportunities to communicate with Members. This would apply to campaign-related information that is delivered through Association channels, such as via the website, the magazine, emails or mailers. Where equal access is required, the Association shall not edit or redact content from these communications but may include a statement specifying that the Candidate or Member, and not the Association, is responsible for that content. The Association is not required to offer communication opportunities to Candidates or Members advocating a point of view; however, if such a benefit is offered to one Candidate or Member, the same opportunity must then be offered to all. If the Association does permit Association media to be used to distribute Candidate statements or information or other advocacy material related to a vote or election, reasonable restrictions on the size, weight and format established by the Association must be followed. For example, a standardized form with a one- or two-page limit may be required for information about a Candidate running for a position on the Board of Directors. Paid advertising in the Tahoe Donner News by Candidates or others supporting a Candidate or advocating a position shall not be permitted.

3.2 Campaign Signage. Signage, flyers and other campaign-related material shall not be posted in or

on Association-owned or controlled Common Area or common facilities or property unless expressly authorized by the Association. Campaign signs are permitted on private property (lots owned by a Member) within Tahoe Donner with the owner's express permission. Any election-related signage must comply with the Town of Truckee regulations that exist at the time of the Election.

3.3 Tahoe Donner Member Contact Lists. Members are entitled to request the official Membership List for communications reasonably related to the requestor's interests as a Member, including elections or votes of the Membership. The Membership List may not be used for purposes excluded by Corp. Code Section 8388. A Member may opt out of sharing that Member's information by notifying the Association, and the Association will notify Members of that right. Additionally, while the Association maintains other Member contact lists for a variety of purposes, those lists are not available to the Members and shall not be shared or harvested and used for campaign purposes.

3.4 Common Areas. In accordance with Civil Code Section 4515, as it may be amended from time to time, Members and residents may peacefully assemble and freely communicate with one another and with others with respect to common interest development living or for social, political or educational purposes, including an election or vote governed by these Election Rules. This right includes the right to use the Common Area, including the Clubhouse, for such assembly when the facilities are not otherwise in use. The Association shall not require payment of a fee or a deposit or require that liability insurance be provided by the Member, as a condition of such use.

4. INSPECTOR OF ELECTION

4.1 To oversee and monitor the logistics of balloting and other voting matters, the Board is required to appoint one or three individuals to serve as Inspectors of Election. The role of an Inspector of Election is to process and count ballots, monitor the tabulation to assure confidentiality for voters and to resolve any uncertainties during the process. Because the most common practice at Tahoe Donner is to use a single Inspector of Election, the singular is used herein.

4.2 The Inspector of Election must be an independent third party. Those not qualifying as independent include a Member of the Board or a Candidate or an immediate family member or co-owner of a Board Member or Candidate. Also not qualifying are any persons employed or retained by the Association for any work except for the specific task of serving as an Inspector of Election. The Inspector may appoint and supervise additional persons to assist with the count and tabulation of ballots, including Members of the Elections Committee, provided they too are independent third parties.

4.3 The Inspector of Election shall perform their duties impartially, in good faith, to the best of their ability, as expeditiously as is practical and in a manner that protects the interest of all Members of the Association. If there are three Inspectors of Election, the decision or act of a majority shall be effective in all respects as the decision or act of all. Any report made by the Inspector of Election (such as the tabulation of ballots) is prima facie evidence of the facts stated in the report.

4.4 The Inspector of Election is responsible for assuring that the sealed ballots are received and processed properly. Once a ballot is received, it is irrevocable. The Inspector of Election or the individual or firm (e.g., independent

accountancy firm) designated by the Inspector shall verify the Member information on the outer envelope prior to or at the meeting at which ballots are tabulated. The validated sealed envelopes shall not be opened until the meeting at which the tabulation is to occur. After publication of the tabulated results of the Election, the Inspector shall direct and control the storage of the Election Materials for a period of 12 months. Thereafter, custody shifts to the Association.

4.5 The Inspector of Election shall do all of the following:

- Determine the number of Memberships entitled to vote and the voting power of each.
- Determine the authenticity, validity and effect of proxies, if any.
- Receive ballots.
- Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote, consistent with the Rules and applicable law, including the discretion to determine that a challenge is not within the Inspector's duties and therefore will not be heard.
- Determine when the polls shall close, consistent with the governing documents.
- Take such other actions that are consistent with law and these Rules to ensure fairness in the election process.

5. VOTING PROCEDURES

5.1 Timing. The Association, assisted by the Elections Committee, shall establish a timeline for the Election of Directors or other vote of the Members. Keep in mind, however, that these Voting Rules cannot be amended within 90 days of an election or vote.

5.2 Appointment of Inspector(s) of Election. At least 60 days prior to an Election, the Board should appoint the Inspector of Election.

5.3 Nominations. At least 30 days before any deadline for submitting a nomination, the Association shall provide Individual Notice of the procedure and deadline for submitting a nomination.

5.4 Verification of Voter Information. At least 30 days before the ballots are distributed, the Association shall permit Members to verify the accuracy of their individual information on a Voter List. The Association or Member shall report any errors or omissions on the List to the Inspector of Elections and/or designated individual assistant, typically staff, who shall make corrections to the Voter List. If there are any Powers of Attorney or Entity/Owner Representatives who will be casting ballots, these must be identified on the Voter List and appropriate documentation provided to the Association in this time frame.

5.5 Voter List Solicitations. Annually, the Association must solicit Member contact information to keep the Membership List updated. In addition to the Membership List the Association must maintain a Voter List and verify the accuracy of the Voter List at least 30 days prior to the distribution of ballots. While there may be overlap between the Membership List and the Voter List, they are two distinctly different lists, and an accurate Voter List is critical for each Election or Vote.

5.6 Balloting Information. At least 30 days before ballots are distributed, the Association shall provide General Notice of the following:

- The date and time by which ballots are to be returned (by mail or hand-delivery) to the Inspector of Election and/or designated individual or firm (e.g., independent accountancy firm);
- The address where ballots are to be returned; and
- The list of all Candidate names that will appear on the ballot.

Individual Notice shall be used for any Member who has requested Individual Notice. The Inspector of Election shall coordinate with the Elections Committee regarding these details.

5.7 Mail-in Ballots. Not less than 30 days ahead of the Election, the Association shall deliver (by first class mail or hand-delivery) secret ballot voting material, including ballots, voting instructions, explanatory material, Candidate statements, etc., to every Member. Prior to opening the received ballots, the Board may reasonably extend the voting period to achieve greater Member participation in reaching quorum requirements (if applicable) or to amend the Declaration or take other actions, which may require approval of a significant percentage of Members. Only the Official Ballot form generated by the Association will be counted. The Association Bylaws do not permit Proxy Voting except for quorum purposes. The Association shall use as a model those procedures used by California counties for ensuring confidentiality of voter absentee ballots, including all of the following:

- The Association shall provide Members with ballot(s) and two pre-printed envelopes along with instructions. The instructions shall specify how ballots are to be returned. Typically, ballots will be returned by first class mail. However, ballots may also be hand-delivered to a secure ballot box.
- The ballot itself is not signed by the Voter, and the Voter may not be identified by name, address or unit and lot number on the ballot itself.
- After marking the ballot, it is to be inserted into the smaller of the two preprinted envelopes, and then the envelope is sealed. This envelope is inserted into a second envelope that is also then sealed. In the upper left-hand corner of the second, outer envelope, the Voter prints and signs their name and verifies the accuracy or otherwise indicates the address

and the unit and Lot number that entitles the Member to vote. Note that an outer envelope received without a Member signature will not be counted (unless a signature is added prior to the tally of the ballots).

- The second outer envelope is addressed to the Association to a location to be designated by the Inspector of Election. The envelope may be mailed and/or delivered by hand to a location specified by the Inspector of Election. The Member may request a receipt of delivery.
- Once a ballot is received, it is irrevocable. If a ballot is properly cast and received within the balloting period, and a sale occurs, the new Member does not cast a second ballot. If no ballot has been cast/received for that property prior to the final voting deadline, the new Member may cast the ballot.

5.8 Uncontested Election/ Acclamation. If, at the close of nominations, the number of qualified nominees is equal to or less than the number of Directors to be elected, pursuant to the Association Bylaws, the Association should consult with counsel as to the ability to declare the nominated Candidates elected without the need for mail-in voting.

6. BALLOT TABULATIONS + ANNOUNCEMENT OF RESULTS

6.1 The Inspector of Election or designated individual or firm (e.g., independent accountancy firm) may verify the Member information on the outer envelope prior to or at the meeting at which the ballots are counted. No one is permitted to open the inner envelope containing the ballot prior to the meeting at which the ballots are to be counted and tabulated.

6.2 The Inspector of Elections shall supervise the counting and tabulating

of the ballots at a properly-noticed open meeting of the Board or Members. Any Candidate or other Member of the Association may witness, but not participate in or interrupt, the counting and tabulation of the ballots.

6.3 The tabulated results of the Election shall be promptly reported to the Board and shall be recorded in the minutes of the next meeting of the Board. Members have a right to review the results. Within 15 days of the Election tally, the Board shall publish by General Notice the tabulated results of the Election in a communication directed to all Members.

7. RETENTION OF ELECTION MATERIALS

7.1 For a period of 12 months following publication of the tallied results of the Election, the Inspector of Election is responsible for custody of the Election Materials and shall determine where the Election Materials shall be stored. After 12 months, the custody of the Election Materials shifts to the Association.

7.2 Upon written request, the Association will coordinate with the Inspector of Elections and/or

designated staff to make the ballots available for inspection and review by Members or their authorized representatives. Any such review shall be conducted in a manner that preserves the confidentiality of the Members' vote.

8. DEFINED TERMS

8.1 **"Election"** means the date on which the ballots are scheduled to be opened and counted.

8.2 **"Election Materials"** means and includes returned ballots, signed voter envelopes, the Voter List of names, physical addresses and/or unit and lot number and voters to whom ballots were to be sent, Inspector(s) of Election Worksheets and the list of Candidates.

8.3 **"General Notice"** means delivery of documents and/or information to a Member by Individual Notice, inclusion in a billing statement or newsletter or posting of the printed document in a prominent place at the Property designated for such notices.

8.4 **"Individual Notice"** means and includes any of the following: first class mail, postage prepaid, registered or

certified mail, express mail or overnight delivery by an express service carrier or electronic mail (if the Member has consented to electronic delivery).

8.5 **"Voter List"** means the list of Membership information generated by the Association and verified by the Members prior to each election, which includes the following information: Member's name and voting power, physical address of the voter's separate interest and/or unit and lot number, the mailing address for the ballot if different from the physical address and identification of Powers of Attorney or Entity/Owner Representatives (if any).

8.6 **"Member List" or "Membership List"** includes a Member's name, property address, mailing address and email address, but not including information for Members who have opted out pursuant to Civil Code Section 5220.

9. AMENDMENT OF VOTING RULES

These Rules shall not be amended less than 90 days prior to the scheduled meeting at which the ballot tally is to be conducted. ▲

